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13 Bayer Corporation and Bayer Healthcare LLC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION
17

18 CENTER FOR SCIENCE IN THE PUBLIC)
19 INTEREST, a non-profit membership)
20 organization, on behalf of itself and its)
members,)

21 Plaintiffs,)

22 v.)

23)
24 BAYER CORPORATION; BAYER)
25 HEALTHCARE LLC.; and DOES 1-10,)
26 Defendants.)

Case No. No. 09-cv-05379-JSW
Assigned to: Hon. Jeffrey S. White

NOTICE OF PENDENCY OF OTHER
ACTION BY DEFENDANTS BAYER
CORPORATION AND BAYER
HEALTHCARE LLC

Pursuant to Local Rule 3-13, counsel of record for Defendants Bayer Corporation and Bayer HealthCare LLC (collectively “Bayer”) hereby gives notice that the above-captioned action involves the same defendants and a material part of the same subject matter as the pending action, *David Johns v. Bayer Corporation and Bayer Healthcare LLC*, No. 09 CV 1935 (S.D. Cal. filed Sept. 3, 2009). *Johns* is a putative nationwide class action brought by an individual consumer asserting claims for violation of California’s Unfair Competition Law (“UCL”) and Consumer Legal Remedies Act (“CLRA”), as well as for unjust enrichment, based on the alleged false promotion of Bayer’s One a Day® Men’s Health Formula and One a Day® Men’s 50+ Advantage products.

Bayer submits that, at this stage in their proceedings, the current action brought by Plaintiff Center for Science in the Public Interest (“CSPI”) and the *Johns* action raise substantially different issues, such that a transfer or consolidation at this time would not avoid conflicts, conserve resources, or promote an efficient determination of the actions. CSPI is an organization that claims no injury to itself and purports to sue only on behalf of its members. As such, the primary issues raised by CSPI’s Complaint concern “associational standing.” As explained in the concurrently filed Motion to Dismiss, the UCL and CLRA preclude CSPI from invoking the doctrine of “associational standing,” and even if they did not, CSPI’s Complaint fails to allege facts establishing such standing. Those issues are irrelevant to the *Johns* action, which is brought by an individual consumer and which is subject to a pending motion to dismiss for entirely different reasons, relating to the particular allegations of that complaint. In the event both complaints were to survive the respective motions to dismiss, Bayer respectfully suggests that the Court could address the issues contemplated by Local Rule 3-13 in the context of case management proceedings.

Dated: November 20, 2009

SIDLEY AUSTIN LLP

By: /s/ Mark E. Haddad

*Attorneys for Defendants Bayer Corporation
and Bayer HealthCare Pharmaceuticals Inc.*